

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

REBECCA TOMEY,
on behalf of A.F.,

Plaintiff,

v.

Civil Action No. 2:10-0873

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending are plaintiff's motion to remand for further proceedings before the Commissioner, filed November 17, 2010, and plaintiff's motion for summary judgment, filed November 19, 2010.

In her Proposed Findings and Recommendation ("PF&R") filed March 16, 2011, the magistrate judge recommends that the court reverse the Commissioner's final decision and remand the claim for consideration of new evidence pursuant to the sixth sentence of 42 U.S.C. § 405(g). The magistrate judge offers a detailed analysis respecting, *inter alia*, why the new evidence identified by plaintiff is relevant and material and why there is good cause for plaintiff's failure to submit the evidence when the claim was before the Commissioner.

Based on her proposed findings, the magistrate judge recommends that the court grant plaintiff's motion to remand insofar as plaintiff requests remand, but deny plaintiff's request that the court order the Commissioner to call a medical expert. The magistrate further recommends that the court deny without prejudice plaintiff's motion for summary judgment. Neither plaintiff nor the Commissioner have objected to the PF&R.

Having reviewed the matter de novo, it is ORDERED as follows:

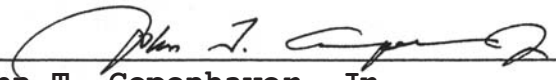
1. That the PF&R be, and it hereby is, adopted by the court and incorporated herein;
2. That plaintiff's motion for remand be, and it hereby is, granted insofar as she requests remand to the Commissioner for consideration of new evidence and denied insofar as she requests that the court order the Commissioner to call a medical expert;
3. That the decision of the Commissioner be, and it hereby is, reversed and this claim is remanded to the Commissioner for consideration of new evidence pursuant to the sixth sentence of 42 U.S.C. § 405(g), which proceedings shall include consideration of, and discussion by, the Administrative Law Judge of the

matters set forth in the PF&R at pages 6 to 10;

4. That plaintiff's motion for summary judgment be, and it hereby is, denied without prejudice; and
5. That this matter be, and it hereby is, dismissed and stricken from the docket.

The Clerk is directed to forward copies of this written opinion and order to all counsel of record and any unrepresented parties.

DATED: April 11, 2011



John T. Copenhaver, Jr.
United States District Judge